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No. 94-1871

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

EXXON CORPORATION,

Petitioner,

vs.

JOHN RICHARD LUDBROOKE YOUELL, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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App

REPLY TO BRIEF IN OPPOSITION

For the reasons stated in the petition for certiorari ("Pet."), Exxon continues to believe that this case offers an appropriate vehicle for the Court to resolve the conflict among the circuits on the proper application of *Wilburn Boat Co.* v. *Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955). *See* Pet. at 7-17.

If the Court prefers not to reach the *Wilburn Boat* issue, however, it may instead dispose of this petition under last week's decision in *Wilton* v. *Seven Falls Co.*, 515 U.S. ___ (June 12, 1995) (No. 94-562). *Wilton* holds that a district court's discretion whether and when to entertain an action under the Declaratory Judgment Act is governed by *Brillhart* v. *Excess Ins. Co. of America*, 316 U.S. 491 (1942), not by *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800 (1976), and *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U.S. 1 (1983). *See Wilton* slip op. at 4-11.

The courts below — following Second Circuit precedent overruled by this Court in *Wilton* — rejected *Brillhart* and applied the *Colorado River/Moses H. Cone* analysis. Pet. at A6-A18, B4. This was error. At the very least, this Court should grant the petition for certiorari, vacate the decision below, and remand the case to the court of appeals for further consideration in light of *Wilton*. This would permit the court of appeals to remand the case to the district court

so that the district judge could exercise her discretion, and explain her decision, under the *Brillhart* standard.[1]

Respondents argue that *Wilton* is distinguishable because federal law rather than state law provides the rule of decision here. *See* Brief in Opposition ("Br. Opp.") at 22-24. Respondents' argument fails for at least two reasons.

First, under *Wilburn Boat* this case is governed by state law. Pet. at 7-17. The court of appeals misread both *Wilburn Boat* and *Orient Ins. Co.* v. *Adams*, 123 U.S. 67 (1887).

Second, even if federal law were to provide the rule of decision, *Wilton* still holds that the district court's discretion whether to entertain the action is governed by *Brillhart*. In Part IV of *Wilton*, the Court understandably noted that it was not "delineat[ing] the outer bounds of that discretion in . . . cases raising issues of federal law," *Wilton*, slip op. at 12, but it is clear that the Court was referring to the district court's discretion under *Brillhart*. Thus, "[t]he [Declaratory Judgment] statute's textual commitment to discretion," *id.* at 9, requires that a district court take into consideration all of the relevant factors, of which the rule of decision is only one, in determining whether to dismiss or stay a declaratory judgment action. The possible existence of federal law issues in Exxon's insurance dispute does not transform this declaratory judgment action, governed by *Brillhart*, into an action governed by *Colorado River*.

Respondents also argue that further action in this case is unnecessary because the district court abused its discretion even under *Brillhart*. *See* Br. Opp. at 22-23. No court has ever reached this conclusion. Every reason given by the Second Circuit for reversing the district court decision is

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[1] Because the *Colorado River*/*Moses H. Cone* analysis is more demanding than *Brillhart*, the court of appeals could also affirm the district court's decision.

based entirely on the now-inapplicable standard of *Colorado River* and *Moses H. Cone*. Pet. at A8-A18.

Furthermore, respondents' argument is wrong. As Exxon explained in the petition for certiorari, the district court acted entirely within its discretion in declining to entertain this action. *See* Pet. at 19. This Court has now reconfirmed that "district courts have substantial latitude in deciding whether to stay or to dismiss a declaratory judgment suit in light of pending state proceedings," *Wilton*, slip op. at 8. The factors that this Court offered as "useful guidance" for district courts in exercising their broad discretion, see *id.* at 5, all support the district court's decision here: the scope of the Texas Action is virtually identical to the scope of the declaratory judgment action, the underlying substantive issues are virtually identical, the claims of all parties in interest can satisfactorily be adjudicated in Texas,[2] all necessary parties have been joined there, and all are amenable to service there. The decision to dismiss this declaratory judgment action was entirely correct.

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[2] Exxon further notes that, unlike many cases in which state courts may be incompetent to resolve federal law issues, in this declaratory judgment action a district court should refrain from issuing declaratory relief because Congress explicitly has contemplated resolution of maritime disputes under the general maritime law in the state courts. 28 U.S.C. § 1331 (savings to suitors clause); Pet. at 20-21. Indeed, the Texas state court is currently resolving Exxon's insurance dispute.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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